

REMARKS

Favorable reconsideration is respectfully requested in view of the previous amendments and following remarks.

Claim 4 is amended to address the issue raised in paragraph "1" of the Official Action. Withdrawal of the claim objection is therefore respectfully requested.

Claim 1 is rejected as being anticipated by U.S. Application Publication No. 2002/0159915, hereinafter Zelina.

The Official Action states that since gaseous sterilizing agent is supplied to the decontamination tunnel 11 in Zelina, a pressure above ambient must exist in the decontamination tunnel 11. The Official Action also takes the position that the aeration chamber 182 is at a reduced pressure and that there is nothing in the heating chamber 170 that would increase the pressure within the heating chamber 170. Based on the above, the Official Action takes the position that, even taking into account the exhaust line 174 withdrawing vapor from the decontamination tunnel 11, the pressure in the decontamination tunnel 11 is inherently higher than in the aeration chamber 182 and the heating chamber 170.

However, in stating that "the heating zone is deemed to be at ambient/atmospheric pressure as there is not a component affecting pressure within", the Official Action ignores the possibility that the heating of the heating chamber 170 may also increase the pressure there above ambient. Moreover, the fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. *In re Rijckaert*, 9 F.3d 1531, 1534, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993). "To establish inherency, the extrinsic evidence 'must make clear that the missing descriptive

matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.' " *In re Robertson*, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999) (citations omitted). Here, the Official Action has explained why it is believed the decontamination tunnel 11 of Zelina may have a pressure higher than in the aeration chamber 182 and the heating chamber 170. However, for reasons discussed above, e.g., in view of the possibility that heating of the heating chamber 170 increases the pressure in the heating chamber 170, the Official Action has failed to provide extrinsic evidence that the decontamination tunnel 11 of Zelina necessarily has pressure higher than in the aeration chamber 182 and the heating chamber 170 as required for inherency.

Additionally, Claim 1 is amended to more clearly distinguish the claimed device at issue here over the disclosure in Zelina. Specifically, amended Claim 1 recites that the device includes means for maintaining a higher positive pressure in the sterilization zone than in the heating zone and venting zone and means for controlling a flow of gaseous sterilizing agent in the sterilization zone such that the gaseous sterilizing agent is both introduced into and evacuated from the sterilization zone at such rate that the higher positive pressure is maintained in the sterilization zone. The amendment is fully supported by the originally filed specification, for example, in lines 15-17 on page ten of the application. Zelina does not disclose both introducing and withdrawing the hydrogen peroxide vapor at such rate that a positive pressure higher than in the heating chamber 170 and the aerating chamber 182 is maintained in the decontamination tunnel 11. Indeed, in Zelina, there is no

disclosure of maintaining any positive pressure at all during withdrawal of hydrogen peroxide vapor from the decontamination tunnel 11.

Accordingly, Zelina does not disclose a device for sterilization in production of packages, including a heating zone, a sterilization zone, a venting zone, means for maintaining a higher positive pressure in the sterilization zone than in the heating zone and venting zone, and means for controlling a flow of gaseous sterilizing agent in the sterilization zone such that the gaseous sterilizing agent is both introduced into and evacuated from the sterilization zone at such rate that the higher positive pressure is maintained in the sterilization zone, in combination with the other features recited in amended Claim 1.

Claim 1 is therefore allowable over Zelina, and withdrawal of the rejection of Claim 1 is respectfully requested.

Claim 1 is also rejected under double patenting grounds as being unpatentable over claims in U.S. Application No. 10/531,297 (now U.S. Patent No. 7,491,371). However, patent Claim 1 recites several features not found in pending Claim 1, for example, an ambient temperature sensor located outside of the device for sensing the ambient temperature outside the device where the sterilizing agent does not flow, a relative humidity sensor for measuring the relative humidity outside the device where the sterilizing agent does not flow, and a concentration meter for measuring the concentration of sterilizing agent in the sterilization zone. Also, pending Claim 1 recites several features not found in patent Claim 1, for example, means for maintaining a higher positive pressure in the sterilization zone than in the heating zone and venting zone, and means for controlling a flow of gaseous sterilizing agent in the sterilization zone such that the gaseous sterilizing agent is

both introduced into and evacuated from the sterilization zone at such rate that the higher positive pressure is maintained in the sterilization zone. In view of the above, pending Claim 1 and patent Claim 1 are clearly patentably distinct from each other. Withdrawal of the double patenting rejection is therefore respectfully requested.

The dependent claims are allowable at least by virtue of their dependence from allowable independent claims. Thus, a detailed discussion of the additional distinguishing features recited in the dependent claims is not set forth at this time.

Early and favorable action with respect to this application is respectfully requested.

Should any questions arise in connection with this application or should the Examiner believe that a telephone conference with the undersigned would be helpful in resolving any remaining issues pertaining to this application the undersigned respectfully requests that he be contacted at the number indicated below.

Respectfully submitted,

BUCHANAN INGERSOLL & ROONEY PC

Date: April 23, 2009

By: Peter T. deVore
Matthew L. Schneider
Registration No. 32814

Peter T. deVore
Registration No. 60361

P.O. Box 1404
Alexandria, VA 22313-1404
703 836 6620